

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

WILLIE COX, JR., a/k/a ABBUE-JAU,

Plaintiff,

v.

JOSEPH DEWLY,

Defendant.

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No. 4:19-CV-2744-JAR

**MEMORANDUM AND ORDER**

This matter is before the Court upon the motion of plaintiff Willie Cox, Jr. for leave to proceed in forma pauperis in this civil action. Upon consideration of the motion and the financial information provided in support, the Court concludes that plaintiff is unable to pay the filing fee. The motion will therefore be granted. Additionally, the Court will dismiss the complaint, without prejudice.

**Legal Standard on Initial Review**

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. An action is frivolous if it “lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief may be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw upon judicial

experience and common sense. *Id.* at 679. The court must assume the veracity of well-pleaded facts, but need not accept as true “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 555).

This Court must liberally construe complaints filed by laypeople. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). This means that “if the essence of an allegation is discernible,” the court should “construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) (quoting *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004)). However, even pro se complaints must allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). Federal courts are not required to assume facts that are not alleged, *Stone*, 364 F.3d at 914-15, nor are they required to interpret procedural rules so as to excuse mistakes by those who proceed without counsel. *See McNeil v. United States*, 508 U.S. 106, 113 (1993).

### **The Complaint<sup>1</sup>**

Plaintiff states he brings this action pursuant to 42 U.S.C. § 1983 against Joseph Dewly. Based upon the allegations in the complaint, Dewly is a judge of the traffic court in Clayton, Missouri.<sup>2</sup> Plaintiff does not specify the capacity in which he sues Dewly.

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<sup>1</sup> Since September 17, 2019, plaintiff has filed fifteen similar actions in this Court, including this one. *See Cox v. Lang*, 4:19-cv-02585-NAB (E.D. Mo. Sept. 17, 2019), *Cox v. Atchison*, 4:19-cv-02586-JAR (E.D. Mo. Sept. 17, 2019), *Cox v. Hartman*, No. 4:19-cv-2587 (E.D. Mo. Sept. 17, 2019), *Cox v. Anello*, 4:19-cv-02588-AGF (E.D. Mo. Sept. 17, 2019), *Cox v. Walz*, 4:19-cv-02589-SRC (E.D. Mo. Sept. 17, 2019), *Cox v. Hulsey*, 4:19-cv-02592-SRC (E.D. Mo. Sept. 17, 2019), *Cox v. Morrow*, 4:19-cv-2593-JAR (E.D. Mo. Sept. 17, 2019), *Cox v. Grammer*, 4:19-cv-02662-PLC (E.D. Mo. Sept. 30, 2019), *Cox v. Crotzer*, 4:19-cv-02727-RLW (E.D. Mo. Oct. 7, 2019), *Cox v. Dodson*, 4:19-cv-02748-AGF (E.D. Mo. Oct. 9, 2019), *Cox v. Walker*, 4:19-cv-02764-RLW (E.D. Mo. Oct. 10, 2019), *Cox v. City of University City, Missouri*, 4:19-cv-02923-JCH (E.D. Mo. Oct. 28, 2019), *Cox v. Brentwood, Missouri, City of*, 4:19-cv-03067-PLC (E.D. Mo. Nov. 7, 2019), and *Cox v. City of Clayton*, 4:19-cv-03091-RLW (E.D. Mo. Nov. 12, 2019), *Cox v. City of Ferguson*, 4:19-CV-3115-JMB (E.D. Mo. Nov. 18, 2019).

Plaintiff's cause of action stems from his court proceeding following a traffic stop for illegal auxiliary lights. Plaintiff's allegations in support of his claim are best understood if directly quoted. They are as follows.

I went to traffic court in Clayton, Missouri for a citation that I had received on 01/04/2019. When I arrived the prosecutor informed me that he had amended the citation from the original ordinance violation to something different and was informed by Mr. Joseph Dewly that that was his right to do so. When I was called before Mr. Joseph Dewly I plead not guilty and requested a jury trial. Joseph Dewly informed me that they were not "set up" for a jury trial and in order to have a jury trial I had to pay a fee to transfer my case to District Court. I did not want to pay a fee so I agreed to just Joseph Dewly, the prosecutor and the citing officer hearing my case. I was found guilty and the next day I appealed to a higher court in which the case was dismissed with prejudice.

(ECF No. 1-1). Plaintiff seeks a total of \$1.5 million in damages.

### **Discussion**

Plaintiff's allegations against Joseph Dewly, presumably the judge involved in his traffic court proceeding, will be dismissed as frivolous. Judges are "entitled to absolute immunity for all judicial actions that are not 'taken in a complete absence of all jurisdiction.'" *Penn v. United States*, 335 F.3d 786, 789 (8th Cir. 2003) (quoting *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)). A judge acts in his judicial capacity when he exercises control over his courtroom. *See Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966) ("the courtroom and courthouse premises are subject to the control of the court"). Plaintiff's complaint arises solely from the actions taken by Dewly as a traffic court judge in Clayton, Missouri. These actions were taken in his judicial capacity and were within his jurisdiction. Dewly is entitled to absolute immunity.

Plaintiff's complaint against Dewly cannot be cured by permitting plaintiff to file an amended pleading. The Court will dismiss this case without prejudice.

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<sup>2</sup> The Court has attempted to verify that defendant Joseph Dewly is a judge in the traffic court in Clayton, Missouri, as implied by plaintiff's allegations. The Court has been unable to do so.


Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for leave to proceed in forma pauperis is **GRANTED**. [ECF No. 2]

**IT IS FURTHER ORDERED** that this case is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

**IT IS HEREBY CERTIFIED** that an appeal from this dismissal would not be taken in good faith.

Dated this 21<sup>st</sup> day of November, 2019.

  
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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE